REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DOLORES S. FAJARDO,
Petitioner,

- versus - C.T.A. CASE NO. 4636

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/12/93

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D E C I S I O N

Petitioner comes to this Court with the prayer that the final decision of the Commissioner of Internal Revenue dated May 9, 1991 denying the cancellation and nullification of the Warrant of Distraint and/or Levy against her be set aside on the ground that the right of the Bureau of Internal Revenue (BIR) to collect the alleged deficiency capital gains tax has already prescribed pursuant to law.

The facts as gathered from the records of the case are as follows:

1. Petitioner owned a parcel of land covered by TCT No. 196089 of the Registry of Deeds of Quezon City, and located at No. 13 Banlat Road, Tandang Sora, Quezon City. On May 8, 1985, she sold the subject property to the Iglesia Ni Kristo

(INK), a corporate sole, for an agreed consideration of P611,650.00 (Exh. "A");

2. On May 19, 1985, petitioner entered into an agreement with a certain Meticia P. Jingco whereby, for a consideration of P55,000.00, Meticia undertook "to pay and settle the Capital Gains Tax, transfer taxes, registration fees, documentary stamp tax, and other incidental expenses " in connection with the sale of the subject property to the INK (Exh. "B");

3. On May 15, 1985, petitioner filed with the BIR her Individual Capital Gains Return on the sale of the subject property (p. 10-12, BIR Records). In said return, petitioner claimed as deduction form the gross selling price the amounts of P5,640.00, P442,500.00 and P82,120.00, allegedly representing the acquisition cost of the property, the value of the improvements she introduced thereon, and the expenses of sale, respectively;

4. Subsequently, the BIR's Assessment Performance Control Division sent petitioner an undated letter (Exh. "C") requiring her to submit to said office the documentary evidence in support of her claimed deductions. This letter was sent to petitioner at her address of record, i.e., No. 13 Banlat Road, Tandang Sora, Quezon City.

Petitioner, however, failed to comply with the BIR's demand;

5. On September 30, 1986, the BIR sent petitioner another letter (again sent to her address of record) reiterating its previous demand for the submission of documentary evidence to support the deductions claimed in petitioner's capital gains tax return (Exh. "D"). The demand was again not complied with by petitioner;

6. On July 27, 1987, the BIR sent petitioner at her address of record, an assessment for deficiency capital gains tax of P101,839.00 exclusive of interest and surcharge (p. 31, BIR Records). The BIR explained that petitioner's claim for deduction of the value of the improvements and the selling expenses (except for documentary stamp taxes) had been disallowed for failure by petitioner to present the required documentary evidence. Petitioner did not reply to this letter as well;

7. On November 23, 1987, the BIR again sent petitioner at her address of record, a second assessment for deficiency capital gains tax in the total amount of P202,811.86, inclusive of interest and surcharge. Petitioner likewise failed to question this assessment;

8. Subsequently, the BIR sent petitioner three tracer letters, respectively dated June 1, 1988, September 7, 1988 and August 7, 1989, at her address of record, but still, petitioner failed to settle her unpaid assessment (see pp. 45-47, BIR Records; see also Exh. "F");

9. On October 22, 1990, the BIR sent another letter to petitioner, giving her a final chance to settle her unpaid assessment pursuant to the provisions of RMO No. 29-90 (Exh. "F-1"). This was followed by another letter of the same tenor, dated February 15, 1991. In both instances, petitioner did not make any response to the BIR;

10. On February 21, 1991, a Warrant of Distraint and/or Levy was served on petitioner at her address of record (Exh. "G"). In addition, a copy of said warrant was also served on petitioner at No. 86 P. Tuazon cor. Planas Site III, Quezon City through a certain Leticia S. Kasunuran, allegedly petitioner's granddaughter (p. 54, BIR Records);

11. On February 27, 1991, petitioner, through her counsel, sent a letter to the respondent Commissioner, requesting that the Warrant of Distraint and/or Levy be lifted on the ground that respondent's authority to issue the same had

allegedly already prescribed, pursuant to the provisions of Sections 203 and 223(c) of the NIRC;

12. On May 9, 1991, respondent Commissioner sent petitioner, through her counsel, a letter denying her request for the lifting of the Warrant of Distraint and/or Levy based on Section 224 of the Tax Code, as amended which provides that the running of the statute of limitation provided in Section 203 and 223 on the beginning of distraint or levy or a proceeding in Court for collection, in respect of any deficiency, shall be suspended for the period when, among others, the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected.

The sole issue which this Court is called upon to resolve is whether or not the Warrant of Distraint and/or Levy was issued beyond the reglementary prescriptive period under the National Internal Revenue Code.

It is well settled that limitations upon the right of the government to assess and collect taxes will not be presumed in the absence of clear legislation to the contrary. The existence of a time limit beyond which the government may recover unpaid taxes is purely dependent upon some express statutory provision. (51 Am. Jur. 867; 10 Mertens Law on Federal Income Taxation, par. 57.02). It follows that in the absence of express statutory provision, the right of the government to assess unpaid taxes is imprescriptible (Aranas, Updated National Internal Revenue Code [7th ed., 1988], p. 881).

Quoted below are related provisions of the Tax Code bearing on the issue at bar which concern limitations on the government's right and exceptions thereto:

> "Section 203. Period of limitation upon assessment and collection. - Except as provided in the succeeding section, <u>internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period</u>: Provided, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return is filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (Underscoring supplied.)
>
> "Section 223. Exceptions as to period of limitation of assessment and collection of taxes.
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> "xxx xxx xxx
>
> "(c) <u>Any internal revenue tax</u> which has been <u>assessed within the period of limitation above-described may be collected by distraint or</u>

levy or by a proceeding in court within three years following the assessment of the tax." (Underscoring supplied)

"xxx xxx xxx

Section 2124. Suspension of running of statute. - The running of the statute of limitation provided in Section 203 and 223 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended x x x when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected; Provided, That, if the taxpayer inform the Commissioner any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint and levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; x x x." (Underscoring supplied.)

The BIR must make a tax assessment within three years after the correspondent return is filed but no action can be brought by it for the recovery of the tax after the lapse of that period in case no assessment has been made. Any tax assessed must in turn be collected by the remedies provided by law, i.e. distraint or levy, within three years following the assessment save in cases specified by law.

In the case at bar, it is ironic that while taxpayer acknowledged having received at her address of record all letters sent by the BIR, including the assessment for deficiency capital gains tax (Exh. "C", "D", "E" and "F"), the Commissioner of Internal Revenue would claim, on the other hand, that the taxpayer cannot be located in the address given by her in the Individual Capital Gains Tax Return filed, there being no response to its letters. It was on this premise of respondent that petitioner's plea for the cancellation and nullification of the Warrant of Distraint and/or Levy against her was denied because the running of the statute of limitation was allegedly suspended during the period respondent was trying to locate petitioner.

As borne out by the records of the case, the letters of the BIR were received at petitioner's address of record and made known to her, albeit no response was made on the honest belief that representations were made by Meticia P. Jingco with the BIR. In fact, respondent admitted in its "Answer" (p. 39-43, C.T.A. Records) the material allegations in the petition which claims to have received all communications from the BIR. No comments were likewise made by respondent on evidence offered by petitioner in support of its contention of receipt of notices evincing lack of objection thereto ("Resolution", p. 69, C.T.A. Records).

From the date of the assessment (1st assessment dated July 27, 1987; 2nd assessment dated November 23, 1987) to the date the Warrant of Distraint and/or Levy was served on February 21, 1991, a period of more than three (3) years has already lapsed. This was beyond the period of limitation provided by Section 223(c) of the Tax Code as amended whereby a tax which as been assessed may be collected by distraint or levy or by a proceeding in court (Section 223(c), NIRC).

Thus, it was held that where the assessment of any internal revenue tax has been made within the time allowed by law, the tax must be collected within three (3) years after the assessment of the tax. **(Collector v. Clement,** L-12101, January 24, 1959.) The three-year prescriptive period is meant to serve as a limitation on the right of the Government to collect taxes by the summary method of distraint and levy. **(Collector of Internal Revenue v. Zulueta and Court of Tax Appeals,** 100 Phil. 872) The right of the Collector of Internal Revenue to collect tax by the summary methods of distraint and levy must be exercised within the period of three years. **(Collector of Internal Revenue v. Avelino and Court of Tax Appeals,** 100 Phil. 327) It is mandatory that the right of the

Collector of Internal Revenue to collect tax by the summary methods of distraint and levy be exercised within the period of three years. (**Collector of Internal Revenue v. Reyes and Court of Tax Appeals,** 100 Phil. 822.)

WHEREFORE, the Warrant of Distraint and/or Levy issued against petitioner is hereby cancelled and annulled for being issued beyond the reglementary prescriptive period. Respondent Commissioner of Internal Revenue is hereby ordered to withdraw said Warrant of Distraint and/or Levy since it has already prescribed.

It is just unfortunate that respondent after having exerted effort, time and resources to assess the deficiency capital gains tax, will now find its right to collect the same has already prescribed. Attention of respondent is called to be more vigilant in the exercise of its rights since the life of the nations depends heavily on its ability to raise revenues for our financially-strapped government.

SO ORDERED

Quezon City, Metro Manila, May 12, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the member of the Court of Tax Appeals in accordance with Section 13, Article VIII of the **Constitution.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals